

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.2.2008.

CORAM

THE HON'BLE MR.JUSTICE M.JEYAPPAUL

Crl.O.P.No.18533 of 2007

J.M.Arumugham

Petitioner

vs.

1. State rep by
The Deputy Superintendent of Police,
Vigilance and Anti-corruption Wing,
Salem.

2. Mr.S.Arumugam
3. Mr.A.Rajendran
4. Ms.Santhi
5. Ms.Brinda
6. Ms.Nirmala
7. Ms.Ramanayaki
8. Ms.Leela

Respondents

Criminal Original Petition filed under section 482 Cr.P.C. seeking to set aside the order dated 26.4.2007 in Crl.M.P.No.1116 of 2007 on the file of the learned Chief Judicial Magistrate, Salem and direct the learned Chief Judicial Magistrate, Salem to grant the certified copies of the petition mentioned documents pertaining to the Special C.C.No.14 of 2004.

For petitioner : Mr.S.Jayakumar

For R1 : Mr.A.Saravanan,
Govt. Advocate (Crl. Side)

For RR 2 to 8 : Mr.V.Gopinath, Senior Counsel for
Mr.L.Mahendran

ORDER

The petition is filed seeking to set aside the order in Crl.M.P.No.1116 of 2007 on the file of the learned Chief Judicial Magistrate, Salem declining to grant certified copies of the documents pertaining to the Special C.C.No.14 of 2004 on his file.

2. A case in Special C.C.No.14 of 2004 was filed against respondents 2 to 8 under section 13(2) read with 13(1)(c) of the Prevention of Corruption Act and section 109 of the Indian Penal Code read with section 13(2) read with section 13(2)(e) of the Prevention of Corruption Act for acquisition of properties disproportionate to the known source of their income. Later on, they were discharged from the proceedings in Special C.C.No.14 of 2004 by the common order dated 6.11.2006 passed by the learned Chief Judicial Magistrate, Salem.

3. The petitioner, who is the former Public Prosecutor for Salem District and a practising Advocate from the District and Sessions Court, Salem, filed a petition in CrI.M.P.No.1116 of 2007 before the learned Chief Judicial Magistrate, Salem seeking certified copy of the First Information Report, Charge Sheet, Docket Sheet endorsement, various petitions, counters and orders passed thereon and the statements recorded under section 161 of the Code of Criminal Procedure for the purpose of preferring revision against the discharge of the accused from the aforesaid case before the High Court.

4. The learned Chief Judicial Magistrate, Salem, having observed that no substantive reason was assigned for seeking certified copies of these documents, that the petitioner was not an affected person as contemplated under section 363(5) of the Code of Criminal Procedure Code, that section 363(6) of the Code of Criminal Procedure can be invoked only before the High Court and that Rule 339 of the Code of Criminal Procedure contemplates furnishing of the records of the Criminal Case only to the parties concerned and not to third parties, chose to dismiss the petition seeking copies of the aforesaid documents.

5. The petitioner assails the aforesaid order rejecting his plea seeking certified copy of those documents for the purpose of preferring revision before this court challenging the discharge of respondents 2 to 7 in Special C.C.No.14 of 2004 on the file of the learned Chief Judicial Magistrate, Salem.

6. Learned counsel appearing for the petitioner would submit that section 363(6) of the Code of Criminal Procedure contemplates supply of copies of any judgment or order of a Criminal Court to any person for that matter on payment of fees as per the rules framed by the High Court. Referring to Order XII Rule 3 of the Rules of the High Court Madras Appellate Side, 1965, he would further submit that on the request of any party certified copies of judicial records can be granted to persons who are not party to the proceedings. Referring to the judgment pronounced by the Bench of our High Court, the learned counsel appearing for the petitioner would submit that in a similar case, our High Court has taken a view that even a third party is entitled to copies of the records in the Criminal Court. Therefore, the impugned order passed by the learned Chief Judicial Magistrate, Salem is liable to be set aside.

7. Learned Government Advocate (Criminal Side) would submit that section 363(6) of the Code of Criminal Procedure contemplates only issuance of grant of copies of the judgment or order of a Criminal Court to a third party in terms of the rules framed by the High Court. No rule invoking the aforesaid law was framed by our High Court. Therefore, the petitioner being a third party is not entitled to copies of any judgment or order of a Criminal Court. Even assuming for the sake of argument that de hors any rule framed by the High Court, the petitioner can invoke section 363(6) of the Code of Criminal Procedure, he can obtain only a certified copy of judgment or order passed by the Criminal Court and not other records not contemplated therein. He would further

contend that Order XII Rule 3 of the Rules of High Court Madras Appellate Side, 1965 does not apply to the records still lying with the Trial Court and not reached the portals of the High Court. Further, the Rules of High Court Madras Appellate Side, 1965 was not enacted drawing powers under section 363(6) of the Code of Criminal Procedure Code. Therefore, Order XII Rule 3 of the Rules of High Court Madras Appellate Side, 1965 does not apply to the fact situation. It is his vehement submission that if the copies of documents maintained by the Criminal Court is parted with to a third party, there is every chance for misuse of those documents which may land an innocent person into trouble at the hands of unscrupulous elements. There may also be miscarriage of justice if such documents are furnished to a third party who is not entitled to such documents and permit him to use it as a weapon to wreak vengeance against an innocent person. Therefore, he would submit that the petitioner, who is a third party, is not entitled to any of the documents maintained by the Criminal Court.

8. As rightly pointed out by the learned Chief Judicial Magistrate, Salem in the impugned order, section 363(5) will not apply to the facts of this case inasmuch as the petitioner who is neither a party to the proceedings nor a close relative to the parties to the proceedings, can be termed as persons "affected by the order". Likewise, Rule 339 of the Code of Criminal Procedure contemplates issuance of copies of the records of the Criminal Court to the parties concerned on payment of proper stamp duty. The petitioner, who is a third party cannot be considered as a party concerned in the aforesaid proceedings in Special C.C.No.14 of 2004 on the file of the Chief Judicial Magistrate, Salem.

9. The question is whether the petitioner, being a third party aggrieved by the order of discharge passed by the Chief Judicial Magistrate in a sensational case under the Prevention of Corruption Act can seek for certified copies of the material records therein. Section 363(6) of the Code of Criminal Procedure reads as follows:-

"The High Court may, by rules, provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order, on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules, provide."

The Parliament, in its wisdom, has thought it fit to grant copies of any judgment or order of a Criminal Court even to a third party as per the terms and conditions of the rules framed by the respective High Court. Unfortunately, our High Court has not framed any rule right from the year 1973. The question that arises for consideration is whether the right of a third party conferred under section 363(6) of the Code of Criminal Procedure to seek certified copies of any judgment or order of Criminal Court can be taken away just because the High Court has not framed necessary rule therein.

10. In the considered opinion of this court, the failure on the part of High Court in framing rules as indicated by the Parliament cannot take away the valuable right of a third party to obtain a copy of the judgment or order of a Criminal Court. Even when the Parliament has intended something and the High Court has not carried its intention to its logical end, the benevolent provision will have to be necessarily extended to the party entitled to enjoy the right recognised therein. This court has already held in D.JAYAKUMAR v. STATE rep by the Inspector of Police, Vigilance & Anti-Corruption Wing, Dindigul in CrI.O.P.(MD) No.10290 of 2007 by order dated 4.10.2007 that a third party is entitled to certified copies of all the material documents in a criminal case.

11. There is no doubt that all the documents sought for by the petitioner/third party are only public documents. They do not fall under the classified information category. It is not the case of the first respondent State that supply of copies of the criminal records in C.C.No.14 of 2004 would jeopardise the interest of the State. After all the petitioner wants to challenge the order of discharge passed by the learned Chief Judicial Magistrate as a citizen concerned with the criminal administration in the country. Further, the Right to Information Act, 2005 prohibits divulging of information which would impede the process of investigation or apprehension or prosecution of offenders. In other respects, furnishing of information from the court records are not prohibited under the Right to Information Act, 2005.

12. It is true that section 363(6) of the Code of Criminal Procedure contemplates only copies of judgment or order of a Criminal Court to any third party. When a party concerned can invoke rule 339 of the Criminal Rules of Practice to obtain any portion of the record of a Criminal Case on payment of stamp duty, the court finds that such a concession also will have to be extended notwithstanding the scope of section 363(6) of the Code of Criminal Procedure to third parties also.

13. Admittedly, the documents are still lying on the file of the Trial Court. It has not reached the portals of the High Court. Order XII Rule 3 of the Rules of High Court Madras Appellate Side, 1965 will apply only in case where the documents have come to the file of the High Court. Further, as rightly pointed out by the learned Government Advocate (Criminal Side), the rules of the High Court Madras Appellate Side, 1965 have not been framed by the High Court empowered under section 363(6) of the Code of Criminal Procedure. Therefore, I find without any hesitation that the Rules of High Court Madras Appellate Side, 1965 does not apply to a case where a third party seeks certified copies of the records of the Trial Court which have not come to the High Court in connection with any case pending before this court.

14. The Right to Information Act, 2005 created a dent in the so-called "privacy" being so far maintained by the authorities concerned. The courts also will have to be alive to the intendment of the Right to Information Act, 2005 to share vital information to the parties concerned. Any narrower interpretation of the law and imposition of any restriction on the right of the third party to know what is actually going on at the portals of the criminal justice system will not advance the interest of justice. For all these reasons, the court finds that the documents sought for by the petitioners in C.C.No.14 of 2004 will have to be granted to him.

15. In view of the above, setting aside the order passed in CrI.M.P.No.1116 of 2007 in Special C.C.No.14 of 2004 on the file of the learned Chief Judicial Magistrate, Salem, he is directed to issue certified copies of all the documents the petitioner has sought for in CrI.M.P.No.1116 of 2007 in Special C.C.No.14 of 2004. The petition stands allowed.

ssk.

To

1. The Chief Judicial Magistrate,
Salem.
2. The Deputy Superintendent of Police,
Vigilance and Anti-corruption Wing,
Salem.